United States District Court
Southern District of New York

FOR JURY TRIAL

DANIEL MCGUIRE,

Plaintiff,

-against-

VILLAGE OF TARRYTOWN ; **DREW FIXELL,** individually and in his capacity as Mayor of the Village of Tarrytown; **STEVE MCCABE**, individually and in his capacity as Village Administrator of the Village of Tarrytown; **SCOTT BROWN**, individually and in his capacity as Chief of Police of the Village of Tarrytown; **SERGEANT FRANK J. GIAMPICCOLO**, individually and in his capacity as police officer of the Village of Tarrytown; **SERGEANT JOHN C. GARDNER**, individually and in his capacity as police officer of the Village of Tarrytown; **SERGEANT JOHN BARBELET**, individually and in his capacity as police officer of the Village of Tarrytown; **SERGEANT KEVIN BARBELET**, individually and in his capacity as police officer of the Village of Tarrytown; **POLICE OFFICER CHRISTOPHER COLE**, individually and in his capacity as police officer of the Village of Tarrytown; **POLICE OFFICER GREGORY M. BUDNAR**, individually and in his capacity as police officer of the Village of Tarrytown; **POLICE OFFICER DENNIS C. SMITH** , individually and in his capacity as police officer of the Village of Tarrytown; **POLICE OFFICER BRIAN F. MACOM**, individually and in his capacity as police officer of the Village of Tarrytown; **BARRY WARHIT**, individually and in his capacity as justice of the Village of Tarrytown; **SHAMEKA TAYLOR**, individually and in her capacity as an Assistant District Attorney in the County of Westchester, **DISTRICT ATTORNEY'S OFFICE**, County of Westchester; **COUNTY OF WESTCHESTER**

COMPLAINT

under 42 U.S.C.
§1983
§1985
§1986
and for
False Arrest
Malicious Prosecution

The Plaintiff, Daniel McGuire, by and through his attorney Charles O. Lederman, for his complaint against Defendant(s) in the subject action states and alleges as follows:

I. **PARTIES TO THE ACTION**:

1. Plaintiff Daniel McGuire, a decorated, disabled veteran of the U.S.M.C. and the N.Y.P.D. and taxpaying homeowner residing at 104 Main Street, Tarrytown, New York since December 2006.

2. Defendants:

A. **VILLAGE OF TARRYTOWN**, New York, with offices at 21 Wildey St., Tarrytown, New York

B. **DREW FIXELL**, individually and in his capacity as Mayor of the Village of Tarrytown, New York, with offices at 21 Wildey St., Tarrytown, New York

C. **STEVE MCCABE**, individually and in his capacity as Village Administrator of the Village of Tarrytown, with offices at 21 Wildey St., Tarrytown, New York.

D. **SCOTT BROWN**, individually and in his capacity as Chief of Police of the Village of Tarrytown, with offices at 150 Franklin St., Tarrytown, New York.

E. **SERGEANT FRANK J. GIANPICCOLO**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

F. **SERGEANT JOHN C. GARDNER**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

G. **SERGEANT JOHN BARBELET**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

H. **SERGEANT KEVIN BARBELET**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

I. **POLICE OFFICER CHRISTOPHER COLE**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

J. **POLICE OFFICER GREGORY M. BUDNAR**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

K. **POLICE OFFICER DENNIS C. SMITH**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

L. **POLICE OFFICER BRIAN F. MACOM**, individually and in his capacity as police officer of the Village of Tarrytown, headquartered at 150 Franklin St., Tarrytown, New York.

M. **BARRY WARHIT**, individually and in his capacity as justice of the Village of Tarrytown, with chambers at Tarrytown Village Court, 150 Franklin St., Tarrytown, New York.

N. **SHAMEKA TAYLOR**, individually and in her capacity as an Assistant

District Attorney in the County of Westchester, with offices at 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York.

O. **DISTRICT ATTORNEY'S OFFICE**, County of Westchester, with offices at 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York.

P. **COUNTY OF WESTCHESTER,** 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York.

II. STATEMENT OF CLAIM - CAUSES OF ACTION:

AS AND FOR A FIRST CAUSE OF ACTION

(False Arrest/Selective Enforcement)

1. That at all times hereinafter mentioned, plaintiff was and still is a taxpaying, home owning resident of 104 Main St., Tarrytown, New York.

2. That on June 8, 2007, at or about noon, plaintiff had a dispute with neighboring renters regarding dumping of refuse on public property adjacent to that of the plaintiff a number of days before the village's regularly scheduled garbage pick ups (in violation of village ordinance). These neighbors, the Loja family, occupies several rental apartments in buildings on opposing sides of plaintiff's property. As the dispute became heated and the neighbors threatened and harassed Plaintiff while throwing refuse toward him, Plaintiff called the police department for assistance.

3. That when Defendant police John Barbelet, Giampiccolo and Cole arrived at Plaintiff's residence, they would not accept his complaint about being assaulted, threatened or harassed. Instead, they told Plaintiff he had no grounds to demand

anything of the offensive neighbor, while ignoring Plaintiff's demand to lodge a criminal complaint. Plaintiff notes, here, that upon information and belief, defendant police sergeant Giampiccolo is or was under special assignment to enforce village building and sanitation codes, that he should have been familiar with local codes, but in fact claimed ignorance of the village building and sanitation codes.

4. That at that time, Plaintiff recalled conversation that his offensive neighbor was employed by two Tarrytown police sergeants (brothers Barbelet), in their "side business" Sleepy Hollow Landscaping company. Plaintiff questioned the three defendant police officers as to whether they were protecting the Barbelets' employees when he was told by Sergeant John Barbelet not to be a "wise ass", then threatened by defendant Cole with being arrested himself for disorderly conduct. Defendant again explained that he himself had called police, not over a garbage complaint, but because he had been harassed and threatened by the neighboring Lojas. Plaintiff pointed out the apparent conflict of interest in the ranking responding officer to the incident, and expressed his disappointment with the cavalier attitude of the police officers. No summonses or complaints were lodged as an immediate result of this first call. Police Report June 8, annexed hereinafter as Exhibit 1.

5. That a further verbal dispute that night resulted in the Loja neighbor calling police for assistance. Defendants Budnar, Giampiccolo and Smith responded to the call. No tickets or summons were issued as an immediate result of the call. Plaintiff

was not questioned at this time by the police. The police report of the incident, however, makes reference to the offending neighbor Loja's later allegation that plaintiff McGuire threatened him with a gun at the earlier noon time altercation. In addition, the police report refers the matter to Detectives Division, which upon information and belief necessarily involved defendant Kevin Barbelet. Police Report June 8, annexed hereinafter as Exhibit 2.

6. That the next day, June 9, 2007, plaintiff McGuire was called into Tarrytown Police Headquarters under the guise of addressing his sanitation code complaints. Instead, plaintiff was arrested and charged with menacing for allegedly threatening his neighbor with a pistol. Police Report June 9, annexed hereinafter as Exhibit 3.

7. That upon his arrest, plaintiff McGuire objected strongly to all of those police present, including defendants Brown, J. Barbelet, Cole, Macom and Gardner. Plaintiff protested that he was the victim of a false arrest, based upon the conflict of interest inherent in the relationship between the original responding Sergeant/employer Barbelet and plaintiff's offensive neighbor Loja.

8. That plaintiff was thereafter arraigned before Tarrytown Village Justice Barry Warhit (presumably upon the filing of a misdemeanor information), released on his own recognizance, and subjected to the terms of a temporary order of protection. Temporary Order of Protection annexed hereafter as Exhibit 4.

9. That trial was held in September 2007 where plaintiff McGuire was acquitted unanimously be a jury of the charges, the criminal action thereby being concluded

in his favor.

10. Plaintiff alleges that his arrest was false in that it was manufactured and devised at the direction and behest of the police on the scene of the two altercations, who were offended by having a citizen tell them how to do their jobs, and who customarily accommodated and extended special protection and treatment to the Lojas.

AS AND FOR A SECOND CAUSE OF ACTION

(Malicious Prosecution/Abuse of Process)

11. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Ten with full force and effect, the same as if each were more fully set forth herein; and further alleges:

12. That upon his arraignment, plaintiff complained to the local justice court of the conflict of interest and the malicious, false nature of his arrest and prosecution, whereby the local justice advised plaintiff to take his complaints to the District Attorney's Office.

13. That within 72 hours of his June 9 arrest, plaintiff contacted the intake unit of the Westchester County District Attorney's Office. He complained that he was being falsely charged by a police officer, and explained the apparent conflict of interest in pursuing trumped up charges by his neighbor while ignoring plaintiffs own calls for help. The District Attorney's intake unit refused to help or even speak with plaintiff, and referred him to counsel assigned in the local justice court.

14. That on or before June 26, 2007, having received no relief, plaintiff wrote a letter

explaining the conflict to defendant Mayor Fixell. See McGuire letter to Mayor, annexed as Exhibit 5.

15. That defendant mayor Fixell thereafter referred the matter to defendant McCabe, who in turn referred the matter back to the police department's chief, defendant Brown. In Village Administrator defendant McCabe's responding letter, he spells out

> "Village policy (common policy in police departments in this area) not to file cross complaints but rather to refer the complaint to the District Attorney's office. Having acted on Mr. Loja's complaint and arrested you the Village Police Department will not engage in a tit-for-tat type situation and arrest Mr. Lojas based on your complaint. Both the Police Chief, and separately the Village Attorney have suggested that you should take your complaints to the District Attorney's Office." See McCabe letter of July 11, 2007, annexed as Exhibit 6.

16. That at trial, the complaining witness (Loja) acknowledged under cross examination that he was unafraid of being ticketed himself because he works for a police sergeant. See Trial transcript at 130, annexed as Exhibit 7.

17. That plaintiff's trial defense counsel thereafter delineated the apparent conflict of interest to the justice court and the prosecutor, defendant Taylor. Defendant Taylor refused to acknowledge that Sergeant Barbelet employed the complaining witness Loja, despite the assertion by the witness himself. Trial Transcript at 160, annexed hereinafter as Exhibit 8.

18. That trial defense counsel went so far as to attain and submit into evidence the business certificate of the complainant's employer listing defendant Barbalet and his brother as owners. Business Certificate for Partners, annexed as Exhibit 9.

19. Plaintiff alleges that defendant prosecutor Taylor intentionally and effectively avoided calling defendant Sergeant Barbelet as a witness in order to avoid cross examination of the ranking officer responding to the scene of the alleged offense in the action. While she either was previously aware or presently became aware of the apparent conflict of interest coloring the events in question, she had an affirmative duty to prevent or curtail the unjust prosecution of plaintiff McGuire. Instead, the defendant prosecutor Taylor, along with her office of the District Attorney chose to obfuscate the truth and denied the jury a full and fair representation of the events. Even so, plaintiff McGuire was still unanimously acquitted of the charges by the jury.

AS AND FOR A THIRD CAUSE OF ACTION

(42 U.S.C. §1983)

20. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Nineteen with full force and effect, the same as if each were more fully set forth herein; and further alleges:

21. That it is and was the custom and policy of the Village of Tarrytown and its employees, under color of state law, to afford preferential and protective treatment to the plaintiff's neighbors because of their employment, and despite any conflicts of interest.

22. That it is and was the custom and policy of the Village, its officers and

departments, as well as that of Westchester County and its District Attorney's Office, to allow and/or prevent the lodging of complaints in an arbitrary and capricious manner. See McCabe letter, Exhibit 6.

23. That the false arrest and malicious prosecution of defendant McGuire deprived him of his liberty interest by subjecting him to arrest, trial, public ridicule and dishonor. That the criminal action also subjected defendant to orders restricting his liberty during the criminal action (T.O.P). That defendant's being set upon by the authorities in Tarrytown has caused him to secure his property at great expense through the installation of surveillance systems, and has caused him to consider moving away from his current home which he had expected to retire in.

24. That the actions of the defendants described herein effectively deprived plaintiff McGuire of the rights and freedoms he is guaranteed under the United States Constitution and the Constitution of the State of New York, to wit:

A. Plaintiff's right to speak freely against his neighbors' and police department's transgressions, and to " petition the government for a redress of grievances," as guaranteed under the United States Constitution, First Amendment, was curtailed by the fact of his criminal prosecution and order of protection, as well as the "policy" of defendants.

B. Plaintiff's legitimate right to bear his personal sidearm, guaranteed under the United States Constitution, Second Amendment, was impeded by the police department's seizure of his weapon upon the local justice's temporary order of protection.

C. Plaintiff's right to be free of unreasonable searches and seizures, guaranteed by the United States Constitution, Fourth Amendment, was violated by the unreasonable search and seizure of his person, and of his property, not only without probable cause, but based upon false charges that were manufactured by the police officers named herein.

D. Plaintiff's guarantees against deprivation without due process of law, and against unequal protection of the laws, as guaranteed by the United States Constitution, Fourteenth Amendment, were violated.

25. That, in addition to the §1983 claims above, plaintiff McGuire's right to full and fair representation at criminal trial was impeded by the Village Justice defendant Warhit's failure to disclose that he had represented a co-defendant of the third Loja brother in a manslaughter and gang assault trial only four years earlier. While this third brother was not one of the witnesses at plaintiff McGuire's trial, his two brothers were. Due to the nature of gang related cases, plaintiff fairly presumes that then defense counsel Warhit was familiarized with other gang and family members in that case. If there was, in fact, some affinity between the justice and the family of witnesses here, defense counsel was unfairly denied an opportunity to move for recusal. The judges omission to disclose his previous acquaintance with the complaining witnesses in this matter raises the suspicions of plaintiff, who, also considering adverse rulings at trial considers that he was actually prejudiced by defendant Warhit's failure to disclose. See Streetgangs.com article annexed hereafter as Exhibit 10.

AS AND FOR A FOURTH CAUSE OF ACTION

(42 U.S.C. §1985)

26. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Twenty Five with full force and effect, the same as if each were more fully set forth herein; and further alleges:

27. That each and all police defendants conspired "for the purpose of impeding, obstructing or defeating . . . the due course of justice" as it pertained to plaintiff; and ". . . to injure [plaintiff] or his property for lawfully enforcing, or attempting to enforce, [plaintiff's right] . . . to the equal protection of laws." 42 U.S.C. §1985(2).

28. That in bringing trumped up, false charges against plaintiff McGuire, the police defendants herein perverted our system of justice in exactly the manner foreseen by the drafters of the statute, and deserves redress under the statute as such.

AS AND FOR A FIFTH CAUSE OF ACTION

(42 U.S.C. §1986)

29. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Twenty Eight with full force and effect, the same as if each were more fully set forth herein; and further alleges:

30. That all defendants named herein were made aware of plaintiff McGuires false arrest and malicious prosecution in violation of his civil rights, and " . . .having power to prevent or aid in preventing commission of the same, neglect[ed] or refuse[d] so to do," in contravention of 42 U.S.C. §1986.

31. That each and every defendant could have prevented such behavior by reasonable diligence, but failed to do so; and in the case of municipal defendants, explicitly refused to question “policy.” See McCabe letter.

AS AND FOR A SIXTH CAUSE OF ACTION

(42 U.S.C. §1988 (b))

32. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Thirty One with full force and effect, the same as if each were more fully set forth herein; and further alleges:

33. That plaintiff McGuire, as a retired veteran of the U.S.M.C. and N.Y.P.D., has a limited income, and has strained his financial limits just to initiate this action.

34. That should he prevail in these causes, he be awarded reasonable expenses and costs incurred in this action.

III. DAMAGES

35. That the plaintiff repeats and re-alleges each and every allegation contained in paragraphs One through Thirty Four with full force and effect, the same as if each were more fully set forth herein; and further alleges:

36. That the foregoing facts as alleged by plaintiff have irreparably harmed and impeded the use and enjoyment of his retirement home in the Village of Tarrytown, due to continuous harassment and surveillance by the local police department.

37. That the violation of plaintiffs civil rights by false arrest and malicious prosecution are particularly offensive given plaintiff McGuire’s lifetime career

dedicated to securing those rights for the rest of us citizens.

38. That these civil rights violations are exactly the type of governmental abuse sought to be remedied by the federal statutes.

39. That plaintiff McGuire, with assistance of assigned counsel in the village court, file a notice of claim on September 7, 2007, annexed hereafter as Exhibit 11.

WHEREFORE, the plaintiff demands judgment against the defendants for $3,000,000.00 DOLLARS in the first cause of action and or, in the alternative; $3,000,000.00 DOLLARS in the second cause of action and or, in the alternative; $3,000,000.00 DOLLARS in the third cause of action and or, in the alternative; $3,000,000.00 DOLLARS in the fourth cause of action; and or, in the alternative; $3,000,000.00 DOLLARS in the fifth cause of action PLUS interest, the costs and disbursements of this action, as well as any other relief deemed just by this Court.

DATED: _________DAY OF ________ 2008
WHITE PLAINS, NEW YORK

____
Charles O. Lederman
Attorney for Plaintiff
15 Avondale Road
White Plains, NY 10605
(914) 557-0181

Exhibit 1

Tarrytown Police Department
150 FRANKLIN STREET
TARRYTOWN, NY 10591-

Entry/CC#: TP-003822-07 Date: 06/08/2007 Time: 12:48 Tour: 2 Desk Officer: DALY

Call Type..: DISPUTE-NON-DOMESTIC Priority..: How Received: TELEPHONE

Caller.....: ,
Bus. Name..:
Address....:
City/St/Zip: TARRYTOWN, NY 10591- Call Back #:

Location of Assignment: 104 MAIN ST, TARRYTOWN
Cross Street..........:
Business Name.........:
Description...........: REPORT OF A DISPUTE
Disposition...........: REPORT FILED

Post: Dispatched: Y Dispatched Date: 06/08/2007 Call Taker: DALY

OFFICERS INVOLVED

Serial #:COLE Rank:PO Name:CHRISTOPHER COLE
Serial #:JBARB Rank:SGT Name:JOHN BARBELET

ASSOCIATED NUMBERS

PERSONS INVOLVED

Name..........:MCGUIRE, DANIEL P DOB:04/07/1958
Address.......:104 MAIN ST
City/State/Zip:TARRYTOWN, NY 10591-
Phone Number..:914-909-6853
Mobile Number..:917-715-4995
Sex...........: Race:
Person Type...:CALLER

Name..........:LOJA, WILLIAM DOB:02/27/1981
Address.......:108 MAIN ST APT# 1
City/State/Zip:TARRYTOWN, NY 10591
Phone Number..:(914)332-4595
Sex...........:M Race:UNK
Person Type...:INTERVIEWED

Name..........:LOJA, ROBERT L DOB:06/28/1973
Address.......:507 DYCKMAN ST
City/State/Zip:PEEKSKILL, NY 10566-
Phone Number..:(914)332-4595
Sex...........:M Race:WHT
Person Type...:INTERVIEWED

NARRATIVE

CALL REPORTING A DISPUTE IN FRONT OF 104 MAIN ST. OFFICERS EN ROUTE AND REPORT CALLER IS UPSET WITH NEIGHBORS AT 108 MAIN ST FOR LEAVING GARBAGE OUT ON THE SIDEWALK TO EARLY. OFFICERS SPOKE TO INVOLVED PARTIES AND STATED THE PIECES OF WOOD WHICH WERE LEFT OUT WERE ON PRIVATE PROPERTY AND NOT ON THE PUBLIC SIDEWALK. THE CALLER BECAME UPSET AND PROCEEDED TO VERBALLY HARASS ASSIGNED OFFICERS AT WHICH TIME RESPONDING OFFICERS ENDED THE

INVESTIGATION AND ADVISED THE CALLER THEY WOULD FOLLOW UP WITH THE BUILDING DEPT. BUILDING DEPT (LOU TUCCI) STATES THERE ARE NO VIOLATIONS IN REGARDS TO THE ABOVE SITUATION.

Certified by ________________ Dated: 6/12/07

Approved by ________________ Dated: ________________

Exhibit 2

150 FRANKLIN STREET
TARRYTOWN, NY 10591-

Entry/CC#: **TP-003838-07** Date: **06/08/2007** Time: **22:08** Tour: **3** Desk Officer: **CAOIL**

Call Type..: **MENACING** Priority..: How Received: **TELEPHONE**

Caller.....: **LOJA, WILLIAM**
Bus. Name..:
Address....: **108 MAIN ST APT# 1**
City/St/Zip: **TARRYTOWN, NY 10591** Call Back #: **(914)332-4595**

Location of Assignment: **108 MAIN ST, TARRYTOWN**
Cross Street.........:
Business Name........:
Description..........: **MENACING WITH A HAND GUN**
Disposition..........: **COMP FILED**

Post: **1** Dispatched: **Y** Dispatched Date: **06/08/2007** Call Taker: **CAOIL**

OFFICERS INVOLVED

Serial #:BUDNA Rank:PO Name:GREGORY M BUDNAR
Serial #:GIAMP Rank:SGT Name:FRANK J GIAMPICCOLO
Serial #:SMITH Rank:PO Name:DENNIS C SMITH

UNIT'S INVOLVED

Unit: 51 Officers: (SMITH)
Disp. Time: | Arv. Time: | Comp Time:
Rcv'd to Comp: 00:00 :: Disp to Comp: 00:00

Unit: 52 Officers: (BUDNA)
Disp. Time: | Arv. Time: | Comp Time:
Rcv'd to Comp: 00:00 :: Disp to Comp: 00:00

Unit: 60 Officers: (GIAMP)
Disp. Time: | Arv. Time: | Comp Time:
Rcv'd to Comp: 00:00 :: Disp to Comp: 00:00

ASSOCIATED NUMBERS

Arrest # :TP-00274-07 Defendant: DANIEL P MCGUIRE DOB:04/07/1958
Case # :TP-00247-07 Incident Type: MENACING
Blotter # :TP-003852-07 Call Type: MENACING

PERSONS INVOLVED

Name..........:LOJA, WILLIAM DOB:02/27/1981
Address.......:108 MAIN ST APT# 1
City/State/Zip:TARRYTOWN, NY 10591
Phone Number..:(914)332-8132
Mobile Number..:914-826-7861
Sex...........:M Race:UNK
Person Type...:COMPLAINANT

Name..........:MCGUIRE, DANIEL P DOB:04/07/1958
Address.......:104 MAIN ST
City/State/Zip:TARRYTOWN, NY 10591-
Phone Number..:914-909-6853

Mobile Number..:917-715-4995
Sex...........: Race:
Person Type...:SUPERINTENDENT

Name..........:LOJA, ROBERT L DOB:06/28/1973
Address.......:507 DYCKMAN ST
City/State/Zip:PEEKSKILL, NY 10566-
Phone Number..:(914)332-4595
Sex...........:M Race:WHT
Person Type...:INTERVIEWED

PROPERTY INVOLVED

Item Descript.:GLOCK 30
Quantity......:1 Value: 0
Year..........: Make: Model: Color:
Disposition...: Date: / /

NARRATIVE

CALLER STATES THERE IS A PERSON AT HIS HOUSE WHO IS THREATENING HIM. OFFICERS ON SCENE REPORT COMPL IS STATING THAT HIS NEIGHBOR THREATENED TO KILL HIM AND THAT EARLIER IN THE DAY SAID NEIGHBOR LIFTED HIS SHIRT AND DISPLAYED A FIREARM ON HIS WAIST WHILE THREATENING HIM. COMPL WOULD LIKE TO FILE CHARGES AGAINST HIS NEIGHBOR. NEIGHBOR NOT ON SCENE. COMPL RESPONDED TO HQ'S AND FILED STATEMENT ABOUT INCIDENTS. CASE #07-247 FILED. TOT DETECTIVE DIVISION.

Certified by [signature] Dated: 6/13/07
Approved by ______ Dated: ______

Exhibit 3

Tarrytown Police Department
150 FRANKLIN STREET
TARRYTOWN, NY 10591-

Entry/CC#: TP-003852-07 Date: 06/09/2007 Time: 11:15 Tour: 2 Desk Officer: JBARB

Call Type..: MENACING Priority..: How Received: WALK IN

Caller.....: ,
Bus. Name..:
Address....:
City/St/Zip: TARRYTOWN, NY 10591- Call Back #:

Location of Assignment: 150 FRANKLIN ST, TARRYTOWN
Cross Street.........:
Business Name.........:
Description...........: ARREST ON CASE 07-247
Disposition...........: ARREST

Post: 1 Dispatched: Y Dispatched Date: 06/09/2007 Call Taker: JBARB

OFFICERS INVOLVED

Serial #:MACOM Rank:PO Name:BRIAN F MACOM
Serial #:GARDN Rank:SGT Name:JOHN C GARDNER

ASSOCIATED NUMBERS

Blotter # :TP-003838-07 Call Type: MENACING

PERSONS INVOLVED

Name..........:MCGUIRE, DANIEL P DOB:04/07/1958
Address.......:104 MAIN ST
City/State/Zip:TARRYTOWN, NY 10591-
Phone Number..:914-909-6853
Mobile Number..:917-715-4995
Sex...........:M Race:
Person Type...:DEFENDANT

NARRATIVE

DANIEL MCGUIRE IN HQ IN REGARDS TO C07-247. AFTER BRIEF INVESTIGATION MR MCGUIRE WAS PLACED UNDER ARREST AND PROCESSED AT THE BOOKING AREA. JUDGE WARHIT CONTACTED FOR ARRAIGNMENT. JUDGE WARTHIT IN HQ FOR ARRAIGNMENT AND RELEASED THE DEFENDANT ROR FOR A RETURN ON 6/13/07. AN ORDER OF PROTECTION WAS SECURED AND MADE A PART OF THE CASE.

Certified by [signature] Dated: 6/12/07
Approved by ______ Dated: ______

Exhibit 4

Exhibit 5

Dear Mayor Fixell,
I am the owner and occupant of 104 Main street Tarrytown along with my wife Blakeley.
We bought the house six months ago. We have an awful problem and I am asking for your help.
Our house is attached on both sides by multi family dwellings. The house was originally built in 1888 to be the post office and remained so until 1909. After that it was converted into a single family house and owned by the lyndsay family until a few years ago. At some point not so long ago Main street where our house is located was raised up higher and a concrete retaining wall was put in the front of this row of attached houses. Now the houses are set down below Main street and there is a common entrance way in the form of a stair case. The set up has caused us unbearable hardship as apparently it did for the lindsay family as well. The buildings that are attached on both sides of our house are owned by slumlords. They are out of town landlords that do not maintain the multifamily dwellings at all. They do nothing except come around once a month and collect cash from there tenants.
Both I and my wife are forced to clean up after these tenants every single day since we bought our house. When I first moved in I picked up sixty (60) contractor bags of garbage from around these properties.I have worked tirelessly to fix up this outside space and to beautify the property and the area. I've painted, landscaped,lime-washed, cleaned and improved. People from the town stop every day to tell me how much nicer this end of main street is now. The problem is the multi family tenants are not happy that I have made it nice.I think they view it as a threat. They stack there garbage up in front of my house every day. They throw there trash on the ground in front of my house and hang around in front of my door. They have no respect. I can't say they are trespassing because The town has the front of my house and my property set up as a passage way. They use the area in front of my house as a play ground and a ball field for soccer. It's just a small concrete area. It sounds so loud that it seems like they are inside of my house. They kick balls against my house and write graffiti on it.They leave empty beer bottles on my window sills. I have talked to there landlords and to them about the problem many times.Neither the landlords or the tenants care at all. I have had to call the health department about there garbage, I've called and met with the building inspector who did write up the landlords and made them get receptacles for the garbage cans.It took me 5 months to get the building inspector over here. I've had Scott Weaver from the DPW over here. these people clogged up the sewers three times already dumping pampers down the toilet. Despite the fact that Scott Weaver told them not to flush there toilets because human feces where coming out onto the sidewalk, they continued to do so any way. For the three hours that Mr Weaver was here, human feces continues to be flushed on to the sidewalk. Mr Weaver screamed in frustration that they where animals. He called the health department.
Mayor Fixell these are just some examples of what I've been dealing with.here. I could write all day and still not cover everything.
The problem gets worse though. This Loja family that reside in both 102 and 108 main st flanking my left and right totally resent and despise me for not letting them run wild in the front of my house and for complaining about there constant illegal garbage dumping. They tell me that they've lived here for twenty years and I have no right to tell them anything. I try to explain that it's my property and also in violation of the village codes etc...
So last week,Friday June 9Th, I asked William and Frank Loja to not leave there dismantled desk out in the front until Monday night. They begain arguing with me and started to physically threaten me. I called 911 and Sgt Barbalet , Sgt Giampiccolo and officer Cole responded. I told the officers that I was a retired NYC Police Officer and that these two guys threatened me. I explained the whole situation and also the fact that Frank Loja in addition to threatening me leaves his Sleepy hollow landscaping truck and trailer on the fire hydrant every day in front of the location. To my shock these officers tell me these guys can do what they want, and also tell the two thugs that it's OK to leave there garbage in public view in front of the house. I told the Sergeant that what he was saying was contrary to the village code, the building inspectors violation notice and the DPW. Of course The Sgt became very angry with me for telling him his job. So the Sergeant tells me that he doesn't know the code. I told the Sergeant that he just set me back to day one from 6 months of trying to straighten out this problem by telling these guys it's OK without even knowing the village code. But I again reiterated that the reason I called 911 was because these guys where threatening me. They did not respond to me at all or any of my complaints. I could not understand why they where acting like this until I remembered one of the Loja brothers telling me that his landscaping company is owned by a Tarrytown Police Sergeant. I ask Sergeant Barbalet If he owned the landscaping truck on the fire hydrant and he said no and calls me a wise ass. The young officer Cole threatens to arrest me for Disorderly conduct! I almost laughed and I told the officers that what's happening here is a conflict of interest. That they are protecting these guys because they are empoyees of there off duty business. I told them I would not call them again for help. I was extremely hurt, disappointed and felt betrayed.
Later that night at 10:15 pm I find William Loja and others loitering 2 feet away from the front of my entrance door. I told him to move off my property and not to hang out there. He began antagonizing me and refused to move. I was scolding him in a loud and authoritative manner because he would not reply to my request. I was also protecting my wife who came out to see what was happening. I did not call the tarrytown police again because of what happened earlier that day. I verbally moved him away from my property and went back inside my house. Sergeant Giampicolo responded to the scene but never knocked on my door or made any attempt to speak to me.
The following day The tarrytown police called me up and asked me to stop by to talk about the codes. When I showed up they arrested me for menacing William Loja the previous day. William Loja wrote out a false affidavit lying about the fact of what happened. I told the The Sergeant that I was the one who called the police because these guys threatened me

with bodily harm. I told them I wanted to make a Cross complaint and have William and Frank Loja arrested for my original call to 911 for threatening me. I also want to file a charge of malicious prosecution. They refused my request. They told me the judge would file that charge. When I asked the court to file a cross complaint they told me the Police where supposed to take it. I now find myself up on criminal charges for a class A Misdemeanor. and I'm going to have to go through a jury trial.
Mayor Fixell I did not menace this man and I am being maliciously prosecuted. I was told yesterday by William Loja's brother Macario Loja that they are doing this to me because I have ruined there lifestyle here. That there kids can't play in the front of the house and because I harass them about there garbage. They are trying to make me sell my house. I was also told the same thing by Carlos Loja the father. They told me yesterday that If I wanted flowers I should have bought a place in the country. Macrio also told me that all three Loja brothers have worked for the two Barbalet Sergeant's for the past ten years. I don't know if William is working for them now or not but Frank the other brother who I wanted arrested is. They also told me that they drink with the Barbalets and that they have gone to there family functions. They originally told me this 6 months ago.
It's a fact that I could not get help from the officers and one of the barbalet sergeants was on the scene. and it's obvious that William was coached on his statement. There is a huge conflict of interest going on here and I'm being maliciously prosecuted. I believe what the Loja's are doing is called Coercion. Macario Loja told me that the cops they know are helping them out, and that they have helped them before.

Mayor Fixell, these are serious allegations and I need your help.I need you to intercede and stop this madness.

I am also formally requesting that the town put a separate stair case leading to 108 Main street so that they have there own entrance way and I can put a decorative wrought iron separation or something between my house and the two unmaintained dwellings on each side of me. The house at 102 Main street already has another entrance way in the front that they can use and so the town would not need to do anything for that location. So I would just have to put a decorative seperation up. By doing this we will know longer have to suffer the hardship that we find our self in day after day.

We are fortunate that we have the support of all of our neighbors who say they will help us in any way they can. These neighbors all own there homes and live here. They have all had to call the police on the same people over the years and know that I am the victim here. They are outraged as well.

Mayor Fixell both myself and my wife love tarrytown. We bought a house here to start a family and have a place to call home. I am a Retired, Decorated, NYC Police Officer and a former US Marine. My wife is a professional dancer with the Martha Graham Dance Company.
We are decent law abiding people that want to live in a nice community. We have worked to improve the area and therefore have contributed to the better good of the village. We also pay taxes on our house. I can't believe that I'm being falsely accused of something I did not do,by people who have done nothing for the community in twenty years except dump there garbage on it. All for the purpose of trying to keep what's not there's, and get rid of us.
I consider every Police Officer my best friend so it's a tough pill to swallow that a couple of my best friends are helping them.

Mayor Fixell, Please help me,

Yours truly,Daniel McGuire

104 Main st
Tarrytown NY 10591

Tel# 917-715-4995

Exhibit 6

TARRYTOWN-ON-HUDSON

21 Wildey Street, Tarrytown, New York 10591-3199

Mayor
DREW FIXELL
Deputy Mayor
THOMAS T. BASHER

Trustees
THOMAS BUTLER
ROBERT HOYT
MARY McGEE
REBECCA McGOVERN
DOUGLAS ZOLLO

VILLAGE ADMINISTRATOR
914-631-1885
VILLAGE TREASURER
914-631-7873
VILLAGE CLERK
914-631-1652
VILLAGE ENGINEER
914-631-3668
DEPT. OF PUBLIC WORKS
914-631-0356

FAX NO. 914-631-1571

July 11, 2007

Mr. Daniel McGuire
104 Main Street
Tarrytown, NY 10591

Dear Mr. McGuire:

As I reported to you on the telephone a few days ago, with respect to your complaints regarding your neighbors we will proceed as follows.

Police Chief Scott Brown has been asked to look into your allegations including a) that Tarrytown police officers told you it was OK for your neighbors to break the law and b) Tarrytown police officers have treated you in a prejudicial manner because your neighbors (the Lojas) work for a Tarrytown police officer's private business. The chief will report to the Village Attorney and me, and we will consider the matter further from there.

Under the direction of our Village Engineer, Village Code Enforcement Officer Mr. Lou Tucci has been asked to review all of your allegations regarding your neighbors' alleged code violations with respect to garbage and clogs in toilets and to report to me. Additionally, Mr. Tucci has been instructed to be particularly vigilant with respect to code enforcement at the subject residences. I will follow-up with him to see that it is done.

You suggested that the Village make alterations to a stairway that provides common access to you and your neighbors' residences on Village property. A review of our records here at Village Hall reveals that the Village does not own property there. If you have any other documentation (your deed for example) that can prove the Village owns this property, we will consider your request for certain alterations.

With respect to your statement that the Village Police Department refuses to arrest Mr. Lojas at your behest and upon your complaint, I have been informed that it is Village policy (common policy in police departments in this area) not to file cross complaints but rather to refer the complaint to the District Attorney's office. Having acted on Mr. Lojas' complaint and arrested you

---

the Village Police Department will not engage in a tit-for-tat type situation and arrest Mr. Lojas based on your complaint. Both the Police Chief, and separately the Village Attorney have suggested that you should take your complaints to the District Attorney's office.

As previously stated, when I have received and reviewed certain of the reports referred to in this letter, I will be in touch with you.

Sincerely,

Stephen A. McCabe
Village Administrator

SMcC:dsb

cc: Mayor Drew Fixell
Scott W. Brown, Chief of Police
Michael J. McGarvey, P.E., Village Engineer
Louis Tucci, Code Enforcement Officer
Jeffrey S. Shumejda, Village Attorney

Exhibit 7

TARRYTOWN VILLAGE JUSTICE COURT
STATE OF NEW YORK/COUNTY OF WESTCHESTER

---x

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

DANIEL P. MCGUIRE,

Defendant.

---x

Tarrytown Village Court
21 Wildey Street
Tarrytown, New York
September 5, 2007

BEFORE: THE HONORABLE BARRY E. WARHIT

APPEARANCES: SHAMEKA TAYLOR, Esquire
Assistant District Attorney
Westchester County

GERALD ZUCKERMAN, ESQUIRE
For the Defendant
175 Main Street
Ossining, New York

LYNN FARRELL-MILEO
830 Bronx River Road
Bronxville, New York 10708
(914) 776-1318

is a few feet back.

Q. Do you recall when Mr. McGuire, you said was arguing with the police. He said look his truck is parked right by the hydrant, why don't you give him a ticket, do you recall that?

A. No, sir, because when he was arguing with them I had stepped away in the direction of the police. So I really couldn't hear anything they were talking about.

Q. Isn't it a fact, very often when you have lunch at your father's apartment, you park in front of the hydrant?

A. Sir, not exactly in front of it but I do park nearby because I have been living there for eight years.

Q. You're not afraid of getting a ticket because you work for a police sergeant, isn't that right?

A. Yes, sir.

Q. Now, I am not clear, who originally brought out the pieces of wood from the desk, who initially brought it outside?

A. My brother.

Q. By the way, before coming to court today, did you discuss this case, what you're going to say, with anyone?

A. No, sir.

Q. You didn't talk to your brother about this case,

Exhibit 8

TARRYTOWN VILLAGE JUSTICE COURT
STATE OF NEW YORK/COUNTY OF WESTCHESTER

---x

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

DANIEL P. MCGUIRE,

Defendant.

---x

Tarrytown Village Court
21 Wildey Street
Tarrytown, New York
September 6, 2007

BEFORE: THE HONORABLE BARRY E. WARHIT

APPEARANCES: SHAMEKA TAYLOR, Esquire
Assistant District Attorney
Westchester County

GERALD ZUCKERMAN, ESQUIRE
For the Defendant
175 Main Street
Ossining, New York

LYNN FARRELL-MILEO
830 Bronx River Road
Bronxville, New York 10708
(914) 776-1318

the jury?

MR. ZUCKERMAN: He participated in conversations with Mr. McGuire. Mr. McGuire told him how he was threatened and Sergeant Barbalet ignored his request and it should be also pointed out that Sergeant Barbalet is the employer of one of the complaining witnesses, particularly, Robert Loga.

THE COURT: Anything else as to this? Then I will respond.

MR. ZUCKERMAN: He was really in a conflict of interest and disregarded his police officer's obligations, and he covered up for his employee. Also, take into consideration that we have evidence from Robert Loga that he regularly parked his trailer in front of a hydrant never getting any tickets. He has police protection, in effect.

MS. TAYLOR: Our response is that Sergeant Barbelet is not a required witness on the part of the People. Also, I might have to have the testimony read back, it's not clear to me that Sergeant Barbalet is the employer of Robert Loja. I believe it's his brother who is the owner of the Sleepy Hollow Landscaping.

Exhibit 9

0133145

C279

Business Certificate for Partners

The undersigned do hereby certify that they are conducting or transacting business as members of a partnership under the name or designation of Sleepy Hollow Landscaping

at 140 Union Ave Tarrytown NY 10591

in the County of Westchester, State of New York, and do further certify that the full names of all the persons conducting or transacting such partnership including the full names of all the partners with the residence address of each such person, and the age of any who may be infants, are as follows:

NAME Specify which are infants and state ages.	RESIDENCE
Kevin G. Barbelet	19 Short Hill Rd New City NY 10956
JOHN BARBELET	140 UNION AV TARRYTOWN NY 10591

PLAINTIFF'S EXHIBIT Def's E 9-6-07 [illegible]
PENGAD 800-631-6989

WE DO FURTHER CERTIFY that we are the successors in interest to

the person or persons heretofore using such name or names to carry on or conduct or transact business.

In Witness Whereof, We have this 15th day of March 1996 made and signed this certificate.

Kevin G Barbelet
John Barbelet

STATE OF NEW YORK, COUNTY OF WESTCHESTER SS.,
I, TIMOTHY C. IDONI, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS, WESTCHESTER COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED IN MY OFFICE ON 3-15-96 AND THAT THE SAME IS A CORRECT TRANSCRIPT THEREFROM AND OF THE WHOLE OF SUCH ORIGINAL.
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
Timothy C. Idoni
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS, WESTCHESTER COUNTY
FEE PAID 7/11/07

State of New York, County of Westchester ss.: **INDIVIDUAL ACKNOWLEDGMENT**

On this 15th day of March 1996, before me personally appeared Kevin Barbelet John Barbelet to me known and known to me to be the individual described in, and who executed the foregoing certificate, and he thereupon duly acknowledged to me that he executed the same.

DREW F. MURPHY
Notary Public, State of New York
No. 01MU5043495
Qualified in Westchester County
Commission Expires May 8, 1997

DREW F. MURPHY
Notary Public, State of New York
No. 01MU5043495
Qualified in Westchester County
Commission Expires May 8, 1997

Drew F Murphy
3/15/96

State of New York, County of **ss.:** **CORPORATE ACKNOWLEDGMENT**

On this day of 19 , before me personally appeared

to me known, who being by me duly sworn, did depose and say, that he resides in

that he is the of

the corporation described in and which executed the foregoing certificate; that he knows the seal of said corporation; that the seal affixed to said certificate is such corporate seal; that it was so affixed by order of the Board of of said corporation, and that he signed h name thereto by like order.

INDEX No. 0193143

Certificate of Partners

...OF DOCUMENT .... $

...G CHARGE

........PAGES .... PER PAGE $

DEPUTY........

CHECKED BY........ TOTAL $ 37-

CONDUCTING BUSINESS UNDER THE NAME OF

FILED

MAR 1 5 1996

LEONARD N. SPANO
COUNTY CLERK
COUNTY OF WESTCHESTER

FILE CT.C 25.0
20 4.00
CT/PREP C 8.0
SUBTTL 33.0
CASH 33.0
3 ITM-CT
03/15/96 260561 000 13:4

State of New York, County of **ss.:** **INDIVIDUAL ACKNOWLEDGMENT**

On this day of 19 , before me personally appeared

to me known and known to me to be the individual described in, and who executed the foregoing certificate, and he thereupon duly acknowledged to me that he executed the same.

Exhibit 10

Suspected Yonkers gang member found not guilty

By JONATHAN BANDLER
THE JOURNAL NEWS
(Original publication: February 4, 2003)

A reputed member of Yonkers' Vatos Locos street gang was acquitted yesterday of manslaughter and gang assault charges in the death of a suspected rival gang member.

Melbin Pena, 25, choked up with emotion and his mother and sister broke into tears as the jury forewoman read the not-guilty verdicts to all four counts on the third day of deliberations. He had been accused, along with five others, in the beating death of Edgar Placido Iturbide. The 19-year-old victim, believed to be associated with the Aztec Pride gang, was severely beaten at Ludlow Street and South Broadway on Oct. 13, 2001, and died three days later.

That morning, Pena was driving a van on South Broadway ahead of a Jeep full of Vatos Locos members when bottles were thrown at their cars. Several people got out of the Jeep and began beating Iturbide.

Pena said he knew some gang members but was not one himself. He testified that he got out to check his van for damage but drove away before the beating. Assistant District Attorney Julia Cornachio attacked his credibility, focusing on a statement he gave police in which he said he kicked the victim once during the melee. He maintained that a Yonkers detective coerced him into writing that.

Defense lawyer Barry Warhit reminded the jury in closing arguments last week that there was no physical evidence linking his client to the crime. He urged the jury to accept Pena's testimony and question the reliability of gang members who were called as prosecution witnesses.

"This case is about witnesses with an indifference to the truth," Warhit told the jury.

Pena was charged with first- and second-degree manslaughter and first- and second-degree gang assault, and could have faced up to 25 years in state prison if convicted of the most serious counts. Instead, Westchester County Judge Barbara Zambelli ordered him released for the first time since his arrest shortly after the beating.

Among the others who were arrested in connection with the beating was Alejandro Limon-Garcia, who agreed to testify against Pena in exchange for a one-year jail sentence. Limon-Garcia did not identify Pena by name but told the jury that a large guy with a bat participated in Iturbide's beating. The stocky Pena, whose face has thinned since the incident, is known as "Gordo," Spanish for fat.

When first questioned by detectives a week after the slaying, Limon-Garcia identified several participants in the beating but could not identify Pena's picture in a photo lineup.

A former leader of Aztec Pride, Carlos Moreno, also was a prosecution witness. He testified that he threw a bottle at the Jeep and identified some of Iturbide's attackers. He claimed Pena tried to trip him but had not been involved in beating Iturbide.

The other four defendants, Juan Loja, Leonardo Romero, Eduardo Rodriguez and Jaime Aquino, all previously pleaded guilty and were sentenced to state prison terms ranging from two to six years.

Copyright © Streetgangs.com, All RIGHTS RESERVED. Disclaimer
All trademarks mentioned herein belong to their respective owners.

Exhibit 11

In the Matter of the Claim of DANIEL McGUIRE

RECEIVED
SEP 0 7 2007
TARRYTOWN VILLAGE CLERK

TO: The Village of Tarrytown
21 Wildey Street
Tarrytown, New York 10591

Police Department of Village of Tarrytown
150 Franklin
Tarrytown, New York 10591

SIRS: PLEASE TAKE NOTICE that the claimant herein hereby makes claim and demand against The Village of Tarrytown and the Police Department of the Village of Tarrytown as follows:

1. The name and post-office address of each claimant is:

Claimant:
Daniel McGuire
104 Main Street
Tarrytown, New York 10591

2. The Nature of the Claim: False arrest, malicious prosecution and false imprisonment.
Because of improper conflict of interest, the Tarrytown police failed to properly investigate criminal charges brought against Claimant, falsely imprisoned claimant and compelled Claimant to stand trial on a baseless case.

3. The time when, the place where and the manner in which the claim arose: June 9, 2007, at Tarrytown Police Headquarters, 150 Franklin, Tarrytown, New York 10591, where Claimant was placed under arrest for the crime of menacing in the second degree.

4. The items of damage or injuries claimed are: Humiliation, severe emotional distress and
suffering, and exacerbation of physical back injury.

The undersigned therefore presents this claim and demands $500,000 for adjustment and payment, and notifies you that unless the same is adjusted and paid within the time provided by law from the date of its presentation to you, it is the intention of the undersigned to commence an action thereon.

Dated: September 7, 2007
Tarrytown, New York

Daniel McGuire

Claimant, Daniel McGuire

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)ss:

Daniel McGuire, being duly sworn, deposes and says that deponent is the claimant in the within claim; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this
7th day of September, 2007

Gerald Zuckerman

Gerald Zuckerman
Notary Public, State of New York
Qualified in Westchester County
No. 02ZU5085841
Commission Expires Sept. 29, 2009

Daniel McGuire
DANIEL McGUIRE